

ORDINANCE -G-2014-7

INTRODUCED BY: Dan Adams, Stephanie
Brinkerhoff-Riley, Dan McGinn, Missy
Mosby, John Friend, Connie Robinson,
Al Lindsey

COMMITTEE: ASD Committee

AN ORDINANCE AMENDING
CHAPTER 9.20 OF THE CODE OF ORDINANCES

WHEREAS, the Common Council finds it to be in the best interest of residents of the City of Evansville and the general public to abate criminal activity constituting a nuisance resulting from the use of properties for illegal purposes; and

WHEREAS, nuisance properties present serious health, safety and welfare concerns and interfere with the quality of life, comfort and solitude of other persons residing in the neighborhood; and

WHEREAS, nuisance properties cause a financial burden upon the City as a result of the numerous calls for service to the properties because of illegal activities that repeatedly occur or exist on such properties.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Evansville, Indiana, as follows:

Section 1. Title 9 (Public Peace, Morals and Welfare) of the Evansville Municipal Code, is hereby amended by the deletion of Chapter 9.20 in its entirety and the substitution of the following in lieu thereof:

**“CHAPTER 9.20 PROHIBITING THE USE OF PROPERTY FOR ILLEGAL AND
NUISANCE ACTIVITY”**

“9.20.010 Purpose and Definitions.

(A) **Purpose.** The Common Council finds it to be in the best interests of residents of the City and the general public to prevent illegal acts and to promote public peace, health, and safety, and to this end, the Common Council enacts this section.

(B) **Definitions.**

“Abate” means to stop an activity or eliminate a condition if of a continuing nature, and to not repeat an activity that constituted a single event.

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Anna Widner
CITY CLERK

"City" means the City of Evansville, Indiana, or, as appropriate, its employees, officers, agents, consultants, or contractors acting under and within the scope of authority of the City to carry out and enforce the provisions of this code.

"Computer Aided Dispatch System" means the computer systems and software utilized by the Police Department and emergency services to dispatch police, fire, medical and related personnel to the public and to generate reports regarding public safety personnel responses to such emergencies or complaints.

"Contact Information" means the name, address, phone number and email address (if applicable).

"Dwelling Unit" means a group of rooms or a room occupied or intended for occupancy as separate living quarters, and may encompass permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Initiate Eviction Proceedings" means to take the necessary steps required under Indiana law, including any notice requirements, to begin the process of eviction ultimately resulting in the filing of a cause of action for the eviction of a Tenant.

"Lease" means the oral or written agreement between the owner or property agent and tenant regarding rental unit or residential rental building.

"Municipal Code" means the Code of Ordinances of the City of Evansville, Indiana.

"Neighbor" means a person who lives in a Dwelling Unit, Residential Rental Building or Residence on the same street or an adjacent street, but no further than a quarter of a mile, to that of a Tenant creating a nuisance or a person who lives within the same dwelling unit or residential rental building as a tenant creating a nuisance but under a separate lease.

"Neighborhood" means the Dwelling Unit, Residential Rental Building, street or adjacent street no further than a quarter of a mile, of a Tenant creating a nuisance. If the Tenant creating a nuisance lives in an apartment complex, the Neighborhood shall include to the grounds of the apartment complex.

"Notice" means a written document served upon the Owner or Property Agent, as listed in the City's Rental Registry, or in the event a property is not registered the Vanderburgh County Assessor's records, and Tenant by personal service followed up with regular mail, postage prepaid, as contemplated in the Indiana Trial Rules. An Owner or Property Agent may elect in their registration to receive notices by facsimile and/or email. A tenant may not waive their right to notice as defined in this paragraph.

"Nuisance" means any violation of this chapter which also includes a condition or activity for which a Tenant is responsible which interferes with a neighbor's possession and/or ordinary use and enjoyment of their Dwelling Unit, Residential Rental Building or Residence. For purposes of

this Chapter, Any violation of sections 9.20.040(a-aa) or 9.20.070(A)(1-13) are presumed to be a Nuisance.

“Owner” means any person who, alone, jointly or severally with others, shall have title to any Residential Rental Building or dwelling unit with or without having actual possession.

“Police Department” means the Evansville Police Department.

“Property Agent” means a person, operator, firm, partnership, corporation, or other legal entity designated by the owner to manage a residential rental building, including the authority to receive notices or citations.

“Rent” means to offer a building or dwelling unit for use or occupation for a definite period of time in exchange for remuneration, whether it be for money, property, or any other form of payment.

“Residence” means a residential building within the City containing one or more dwelling units that are owner-occupied.

“Residential Building” means a building or structure that is intended for and used as a residence or multiple residences.

“Residential Rental Building” means any residential building within the City containing one or more dwelling units held or intended to be held for rent.

“Revised Lease” means the amended oral or written agreement between the owner or property agent and the remaining tenant(s) after one of the persons obligated or listed on the lease were subject to an Eviction Filing Order.

“Safety Board” means the Board of Public Safety of the City of Evansville, Indiana and Vanderburgh County.

“Tenant” means a lessee, occupant, or guest of a Residential Rental Building, Dwelling Unit, Residence or Residential Building. For purposes of this Chapter a Tenant is responsible for the actions of their guests even if a guest is asked to leave and becomes a trespasser.

9.20.020 Abating Nuisances in Residential Areas.

(A) Abating Nuisances. No Owner or Property Agent of a Residential Rental Building located in the City shall knowingly allow a Tenant to be a Nuisance to their Neighbors. For purposes of this Chapter an Owner or Property Agent becomes aware of a Nuisance upon receipt of a notice of a Complaint, Nuisance Determination, or an Eviction Filing Order as provided for in this Chapter.

(B) Discrimination Forbidden. Nothing in this Chapter shall be construed to encourage or authorize the discrimination by lessors against any persons based upon any protected class

established by the legislative, executive or judicial branch of federal, state or local government. Rather, it is the intent of this Chapter to hold persons accountable for acquiescing in or participating in the continued use of their property in a manner that results in a Nuisance or Nuisance Activity affecting the quality of life of residents of the City.

9.20.030 Nuisance Reports

(A) Reports of Nuisance Activity. The Police Department may, in its discretion, initiate a Complaint in connection with a suspected Nuisance activity based on information obtained through central dispatch or reports generated by the Computer Aided Dispatch System ("Report"). In the event of a situation not requiring an immediate response from the Police Department, a Report regarding suspected Nuisance activity may be submitted directly to the Police Department. Upon receipt of a Report, the Police Department or its representative shall log and collect the following information from the complaining party:

1. Contact Information of the party submitting the Report;
2. Contact Information of the party causing the Nuisance if available;
3. A description of the condition or activity causing a Nuisance;
4. Date of the incident or the date the condition or activity began;
5. Address of the Dwelling Unit, Residence, or Residential Rental Building where the Nuisance activity exists or occurred;
6. Contact Information of any witnesses or any party otherwise involved; and
7. The disposition of the investigation and Contact Information regarding the investigating officer of the Police Department.

In the case of a Report initiated by the Police Department, the contents of reports generated by the Computer Aided Dispatch System shall be sufficient for purposes of documenting a Report.

(B) Investigation and Notice to Owner or Property Agent. Following the investigation of a Report, the Police Department may serve notice of the Report, in the form prescribed by the Safety Board, on the Tenant and the Owner or the Property Agent ("Complaint"). The Police Department may, in its discretion, redact Contact Information from the Complaint. An Owner or Property Agent shall have ten (10) calendar days from the date of the Complaint to contact the officer of the Police Department.

The officer and the Owner or Property Agent shall have ten (10) calendar days to collaborate and make a good faith effort to jointly investigate and determine whether a Tenant's activities constitute a Nuisance under this Chapter. In the event that a Nuisance determination is made, the Police Department shall serve notice of the Nuisance finding upon the Tenant, Owner and/or Property Agent ("Nuisance Determination"). The Police Department shall make the final decision regarding the issuance of a Nuisance Determination based on a preponderance of the evidence standard.

(C) Failure to Respond to a Complaint. If an Owner or Property Agent fails to respond to a Complaint within ten (10) calendar days from the date of mailing, the Police Department shall proceed with investigating the Complaint and shall make a determination regarding the issuance of a Nuisance Determination.

9.20.040 Activities Resulting in the Issuance of a Nuisance Determination

(A) Arrests or Citations. Notwithstanding Section 9.20.030 and upon having knowledge that a Tenant has been arrested, cited or found by the Police Department to have committed any of the following offenses, the Police Department may issue a Nuisance Determination (collectively, hereinafter referred to as "Nuisance Activity"):

- a. Criminal mischief in the Tenant's Neighborhood;
- b. Intimidation of a Neighbor;
- c. Theft, forgery or fraud with a Neighbor as the victim or intended victim;
- d. Battery against a Neighbor;
- e. Harassment of a Neighbor;
- f. Invasion of Privacy or criminal trespass related to a Neighbor;
- g. Vandalism in the Tenant's Neighborhood;
- h. Disorderly conduct in the Tenant's Neighborhood;
- i. Public Indecency in the Tenant's Neighborhood;
- j. Public Intoxication in the Tenant's Neighborhood;
- k. Criminal conversion with a Neighbor as the victim;
- l. Maintaining a common nuisance;
- m. Alcohol offenses related to underage drinking at the Tenant's Dwelling Unit or Residential Rental Building;
- n. Voyeurism in the Tenant's Neighborhood;

- o. Possession of marijuana from the Tenant's Dwelling Unit or Residential Rental Building;
- p. Illegal Gambling occurring at the Tenant's Dwelling Unit or Residential Rental Building;
- q. Violation of the Municipal Code related to firearms in the Tenant's Neighborhood (Chapter 9.10.010);
- r. Violation of the Municipal Code related to fireworks in the Tenant's Neighborhood (Chapter 9.10.020);
- s. Violation of the Municipal Code related to throwing lighted objects in the Tenant's Neighborhood (Chapter 9.10.030);
- t. Violation of the Municipal Code related to abandoned refrigerators in the Tenant's Neighborhood (Chapter 9.10.050);
- u. Violation of the Municipal Code related to residential noise in the Tenant's Neighborhood (Chapter 10.30.030 or Chapter 16.05.390);
- v. Violation of the Municipal Code related to vehicle noise in the Tenant's Neighborhood (Chapter 10.30.040);
- w. Violation of the Municipal Code related to abandoned vehicles in the Tenant's neighborhood (Chapter 8.10.100);
- x. Violation of the Municipal Code related to property maintenance of the Tenant's Residential Rental Building if the tenant is responsible pursuant to the lease (Chapter 15.15);
- y. Violation of the Municipal Code related to weeds and rank vegetation related to the tenant's residential rental building if the Tenant is responsible pursuant to the lease (Chapter 8.05.190);
- z. Violation of the Municipal Code related to open burning (Chapter 16.05.200);
or
- aa. Any attempt to commit and/or conspiracy to commit any of the above activities, behaviors or conduct.

The Police Department shall send a copy of the Nuisance Determination to the Owner or Property Agent of record.

9.20.050 Abatement of Nuisance

An Owner, Property Agent and Tenant receiving a Nuisance Determination must Abate the cited Nuisance within seventy-two (72) hours of receipt of the Nuisance Determination. An Owner or Property Agent shall submit a written response to the Police Department detailing the action taken by the owner to abate the Nuisance. If the Nuisance is not Abated within seventy-two (72) hours of receipt of the Nuisance Determination, the Police Department shall issue a notice to evict the Tenant responsible for the Nuisance ("Eviction Filing Order") to the Tenant and Owner or Property Agent directing the Owner or Property Agent to Initiate Eviction Proceedings against the responsible Tenant. An Owner or Property Agent must Initiate Eviction Proceedings within ten (10) calendar days of being served an Eviction Filing Order from the Police Department. All parties served with the Nuisance Determination shall be served with an Eviction Filing Order. A copy of any Eviction Filing Order shall be submitted to the City Law Department and the City representative responsible for maintaining the landlord rental registry pursuant to Chapter 8.40 of the Evansville Municipal Code. Notwithstanding the foregoing, if an Owner or Property Agent has demonstrated that an eviction of the responsible Tenant has already been filed or the Tenant has already vacated the Dwelling Unit, Residence or Residential Rental Unit, an Owner or Property Agent shall not be required to Initiate Eviction Proceedings.

9.20.060 Abated Nuisance and Subsequent Nuisance Activity

The Police Department shall issue an Eviction Filing Order if a Tenant receives two or more Nuisance Determinations pursuant to Section 9.20.040(a-p) within a calendar year or three or more Nuisance Determinations pursuant to Section 9.20.040(q-aa) within a calendar year. For purposes of this Chapter a Nuisance Determination issued pursuant to Section 9.20.040(a-p) is equal to two Nuisance Determinations if considered in combination with one or more Nuisance Determinations issued pursuant to Section 9.20.040(q-aa). An Owner or Property Agent shall Initiate Eviction Proceedings against a Tenant responsible for a Nuisance if the Tenant and the Owner or Property Agent receives an Eviction Filing Order.

9.20.070 Activities Resulting in Automatic Issuance of an Eviction Filing Order

(A) Automatic Eviction of a Tenant. Upon becoming aware of a crime enumerated in this section and the Police Department's knowledge that such criminal act or parole violation was committed by a Tenant, the Police Department shall serve an Eviction Filing Order to the Owner or Property Agent if a Tenant is arrested and charged with or is subsequently in violation of parole for any of the following crimes as defined within the Indiana Code:

1. Murder;

2. Rape;
3. Child Molestation;
4. Prostitution occurring in the Tenant's Neighborhood;
5. Sale or possession of illegal drugs or the sale of controlled substances, with the exception of the possession of marijuana, in the Tenant's Neighborhood;
6. Stalking related to a Neighbor;
7. Manufacturing of methamphetamines in the Tenant's Neighborhood;
8. Arson;
9. Robbery;
10. Burglary;
11. Sexual crimes as defined in Indiana Code 35-42-4-1 through 35-42-4-13, as may be amended from time to time;
12. Any violation of Section 9.20.130 of this Chapter;
13. Any attempt to commit and/or conspiracy to commit any of the above activities, behaviors or conduct.

(B) Issuing Notice. The Police Department shall serve written notice to the Tenant responsible and the Owner or Property Agent within ten (10) calendar days of the arrest or filing of a petition for revocation of parole. The Property Agent or Owner shall Initiate Eviction Proceedings within ten (10) calendar days of receiving the Eviction Filing Order. If the Tenant is one of multiple tenants on a single lease, the Owner or Property Agent may, at its discretion, contract with the remaining tenants so long as the offending Tenant is excluded from the Revised Lease. The Owner or Property Agent does not waive any rights it may have under the original lease.

9.20.080 Filing of Criminal Charges.

Charging an Owner or Property Agent of real estate with a violation of this section shall be in addition to and not a substitution for, any criminal charges or petitions for revocation of parole filed as a result of investigation by the Police Department against occupants or Tenants.

9.20.090 Procedural Review of Nuisance Determination or an Eviction Filing Order

An Owner or Property Agent may petition for review of a Nuisance Determination or an Eviction Filing Order in writing within five (5) calendar days of receipt of such Notice. The Safety Board shall accept petitions for review filed in person, by email, facsimile or mail on a

form prescribed by the Safety Board which form shall include information regarding the review process including all relevant deadlines and information regarding the prohibition of renting to an evicted party pursuant to section 9.20.130 of this Chapter. Any Owner or Property Agent submitting a petition for review shall identify only issues related to procedural violations of this Chapter in their petition for review.

The Safety Board shall conduct a procedural review of the manner in which the subject Nuisance Determination or Eviction Filing Order was issued at its first reasonable opportunity and no later than the second regularly scheduled meeting after a petition for review has been received. An Owner or Property Agent who filed a petition for review shall receive notice of the date, time, and place of the meeting at which a determination shall be issued at least five (5) calendar days prior to the date of the meeting. The Safety Board's review shall be limited to whether the procedural requirements of this Chapter resulting in the issuance of a Nuisance Determination or an Eviction Filing Order have been followed. The Safety Board shall not hear any testimony or comment when making its determination. A determination issued by the Safety Board shall be final. In the event the procedures of this Chapter are not followed and a determination is issued in favor of the Owner or Property Agent, the Nuisance Determination or Eviction Filing Order that is the subject of the petition for review shall be vacated. The City shall not commence an action against an Owner or Property Agent for violation of this Chapter until a procedural review has been conducted by the Safety Board following the timely filing of a petition to review by an Owner or Property Agent.

9.20.100 Penalty

An Owner or Property Agent who fails to comply with an Eviction Filing Order shall be subject to a fine in the amount of Seven Hundred Fifty Dollars (\$750.00) for violation of this Chapter. Each day a violation exists shall be considered a separate violation and a court may assess a monetary civil penalty for each day a violation exists. The maximum fine for a violation under this section shall be Five Thousand Dollars (\$5,000.00).

9.20.110 Eviction Proceedings as a Defense.

No person shall be charged with the violation of this section if such person:

- (1) Has instituted eviction proceedings within ten (10) days of receipt of an Eviction Filing Order, in accordance with subsection (B) of this section, against the Tenant responsible for a Nuisance or Nuisance Activity;
- (2) Has proceeded with reasonable diligence in the prosecution of said eviction proceedings;
- (3) If any eviction proceedings are not completed within 30 days by reason of court-ordered delays in such proceedings, the person charged with the violation of this section must, nonetheless, move forward expeditiously with any such eviction proceedings; or

(4) Has initiated an action under IC 32-30-8-1 et seq. or any other similar eviction law which will cause such Nuisance or Nuisance Activity to cease upon the property.

9.20.120 Police Department Cooperation

The Chief of Police shall use reasonable efforts to train, educate, and assist owners of real estate in avoiding placing tenants or occupants in their real estate who are known violators of this Chapter. Police officers shall appear in court to testify if subpoenaed by Owners or Property Agents and, subject to applicable law, work diligently to assist Owners or Property Agents acting pursuant to this Chapter through the disclosure of information, statements, witnesses or evidence related to a Complaint, Nuisance Determination or Eviction Filing Order, unless otherwise prohibited by law. Following 120 days from the effective date of this Chapter, the Police Department shall maintain records of Complaints, Nuisance Determinations and Eviction Filing Orders and make such records available to Owner's and Property Agents upon request, unless otherwise prohibited by applicable law.

9.20.130 Prohibition of Renting to Tenant

An Owner or Property Agent who evicts a Tenant under this Chapter may not Rent to or otherwise allow the evicted Tenant to occupy a Dwelling Unit, Residence or Residential Rental Building owned or operated by the Owner or Property Agent within the City for one (1) year from the date of eviction of the Tenant.

9.20.140 Limited Indemnification Owner or Property Agent

The City shall provide a limited indemnification to an Owner or Property Agent who has Initiated Eviction Proceedings in court and is sued or a counterclaim is asserted by the individual who is sought to be evicted, under the all of the following terms and conditions:

- (1) The premises which are the subject of the eviction proceedings are located in the City of Evansville;
- (2) Eviction proceedings are instituted in Vanderburgh County in compliance with the Indiana Trial Rules and State law;
- (3) The Owner of the property received an Eviction Filing Order from the Police Department and instituted eviction proceedings solely because of such notice;
- (4) The Owner instituted eviction proceedings within ten (10) days of receipt of an Eviction Filing Order;

(5) The Owner has given the office of the City Attorney no less than thirty (30) days' written notice of the trial date of any claim, lawsuit or counterclaim against said Owner or Property Agent, and no less than seventy-two (72) hours' written notice of any claim, lawsuit or counterclaim against said Owner or Property Agent; any such notice shall be in writing and sent by U.S. mail return receipt requested;

(6) The claim, counterclaim or lawsuit is based upon an alleged illegality or unconstitutionality of this section or the negligence of the Police Department in providing information to the Owner or Property Agent and was relied upon by the Owner or Property Agent as a basis of bringing an action against the Tenant sought to be evicted;

(7) The Owner or Property Agent fully and expeditiously cooperates with the office of the City Attorney in defense of such claim, lawsuit or counterclaim, including but not limited to allowing the office of the City Attorney to intervene in the lawsuit and assist with the defense of such claim, lawsuit or counterclaim;

(8) The office of the City Attorney is permitted to pursue any and all appeals of the decision of the court on behalf of the Owner or Property Agent; and

(9) The Tenant sought to be evicted prevails on his/her claim, lawsuit or counterclaim solely based upon a finding of illegality or unconstitutionality of this chapter or the negligence of the Police Department in supplying the information to the Owner or Property Agent and not on a finding of procedural wrongdoing or other improprieties or illegalities of the Owner or Property Agent in pursuing the eviction. If the Tenant to be evicted prevails on his/her claim, lawsuit, or counterclaim based upon any other reason, including, but not limited to, procedural wrongdoing, or the negligence, bad faith, or other impropriety or illegality of the Owner or Property Agent, then the indemnity shall not apply.

9.20.150 Nonexclusive Remedy.

The provisions of this Chapter shall not in any manner be construed to limit or be a condition precedent to bringing an action under IC 32-30-8-1 et seq. or under any other law. This Chapter shall not create a right for a third party to bring a cause of action pursuant to any provision herein nor shall this Chapter increase or expand an Owner or Property Agent's duty to provide property in a habitable condition under existing law.

9.20.160 Validity

In the event any section, part or provision of this chapter shall be held unconstitutional or invalid by any court, such holding shall not affect the validity of this chapter or any remaining part of this chapter, other than the part held unconstitutional or invalid.

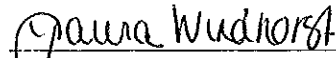
Section 2. Effective Date. This resolution shall be in full force and effective from and after its passage by the Common Council and signing by the Mayor.

PASSED BY THE COMMON COUNCIL OF THE CITY OF EVANSVILLE,
INDIANA ON THE 01 DAY OF JUNE, 2014 ON SAID DAY SIGNED BY
THE PRESIDENT OF THE COMMON COUNCIL AND ATTESTED BY THE CITY CLERK.



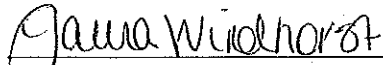
President of the common Council, John Friend

ATTEST:



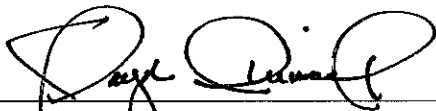
Laura Windhorst, City Clerk

Presented by me, the undersigned City Clerk of the City of Evansville, Indiana, to the Mayor of said city, this 10 day of JUNE, 2014, at 3 o'clock P.m. for his consideration and action thereon.



Laura Windhorst, City Clerk
City of Evansville, Indiana

Having examined the foregoing resolution, I do now, as Mayor of the City of Evansville, Indiana, approve said resolution and return the same to the City Clerk this 10th day of JUNE, 2014, at 3:45 o'clock P.m.



Lloyd Winnecke, Mayor
City of Evansville, Indiana